

The Texas Commission on Environmental Quality (TCEQ or commission) adopts new §§114.510 - 114.512 and 114.517; and corresponding revisions to the state implementation plan (SIP). The commission adopts new §114.512 and §114.517 *with changes* to the proposed text as published in the July 30, 2004 issue of the *Texas Register* (29 TexReg 7268). The commission adopts new §114.510 and 114.511 *without changes* to the proposed text and will not be republished.

The new rules and revised SIP narrative will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the SIP.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

Texas has a history of proactive air quality initiatives. Since 1996, the legislature has provided funding to the near-nonattainment areas (San Antonio, Austin, Northeast Texas, Corpus Christi, and Victoria) for use in performing planning functions related to the reduction of ozone concentrations in each area. The areas have conducted ambient air monitoring, following EPA guidelines, which goes beyond that performed by the commission, including installing and maintaining supplementary monitors. The areas developed emissions inventories and photochemical modeling episodes, and the modeling episode results have been used for air quality planning and to develop clean air action plans. In response to the promulgation of the new eight-hour ozone national ambient air quality standard (NAAQS), the local elected officials and air quality planners in Central Texas proposed an “accelerated attainment area” concept to the commission and to the EPA. This concept, which was designed to help voluntarily achieve the eight-hour ozone standard, eventually developed into an “early implementation plan.” Neither concept was endorsed by EPA, although in 2001, EPA proposed an “ozone flex” program to

allow areas to create voluntary plans to address the one-hour ozone NAAQS. The state was among the first in the nation to adopt an “ozone flex agreement.” A precursor to the early action compact (EAC) program, “ozone flex agreements” were designed to help maintain compliance with the one-hour ozone standard.

The commission continued to be committed to the concept of voluntary, early action toward the eight-hour standard and continued to work with EPA and members of the environmental community toward that end. In March 2002, the commission approached EPA for approval of the concept of an “early action plan” to be established through a compact between local, state, and EPA officials for areas that are in attainment (including no monitored violations) of the one-hour ozone standard, but that are approaching or monitoring exceedances of the eight-hour standard.

This concept of an early, voluntary eight-hour air quality plan, or EAC, was endorsed by EPA Region 6 in June 2002, then slightly modified and made available nationally in November. The EACs include all the necessary elements of a comprehensive air quality plan, but are tailored to local needs and driven by local decisions. An EAC is designed to develop and implement control strategies, account for growth, and achieve and maintain the eight-hour ozone standard. This approach offers a more expeditious time line to achieve emission reductions earlier than the EPA’s eight-hour implementation rulemaking, while providing “fail-safe” provisions for the area to revert to the traditional SIP process if specific milestones are not met.

The principles of a tri-party EAC, to be executed by local, state, and EPA officials, are: 1) early planning, implementation, and emission reductions leading to expeditious attainment and maintenance of the eight-hour ozone standard; 2) local control of the measures to be employed, with broad based public input; 3) state support to ensure technical integrity of the EAC; 4) formal incorporation of the EAC into the SIP; 5) deferral of the effective date of nonattainment designation and related requirements, provided all EAC terms and milestones are met; and 6) safeguards to return areas to traditional SIP requirements should EAC terms and/or milestones be unfulfilled, with appropriate credit given for emission reduction measures implemented. A key point of an EAC is the flexibility afforded areas to select emission reduction measures. Based on quality science, signatories may choose the combination of measures that meet both local needs and emission reduction targets. Each EAC recognizes that not every entity within the EAC area will implement every measure. Should an EAC area agreement miss a milestone at any time during the agreement, including attaining the eight-hour standard by 2007, it would forfeit its participation and rejoin the eight-hour implementation process in progress. The EAC area would then be subject to the same requirements and deadlines that would have been effective had it not participated in this program, with no delays or exemptions from EPA rules.

On December 9, 2002, the cities of Floresville, New Braunfels, San Antonio, and Seguin; the counties of Bexar, Comal, Guadalupe, and Wilson; the commission; and EPA entered into an EAC for the San Antonio metropolitan statistical area (MSA). The San Antonio EAC area applies to Bexar, Comal, Guadalupe, and Wilson Counties. The EPA default assumption in defining nonattainment area boundaries is the MSA boundaries; therefore, the San Antonio EAC elected to use the MSA at the time of agreement for the EAC and the clean air action plan. In accordance with the commitments made in

the San Antonio EAC, the area prepared and submitted by March 2004 a clean air action plan that demonstrates attainment of the eight-hour standard in the area by 2007 and maintenance of the standard until at least 2012. On April 15, 2004, EPA designated as nonattainment the San Antonio EAC area counties of Bexar, Comal, and Guadalupe based on the 2001 - 2003 design value of 89 parts per billion. Wilson County was designated as attainment.

On December 18, 2002, the cities of Austin, Bastrop, Elgin, Lockhart, Luling, Round Rock, and San Marcos; the counties of Bastrop, Caldwell, Hays, Travis, and Williamson; the commission; and EPA entered into an EAC for the Austin MSA. The Austin EAC area applies to the five counties included in the MSA, which are Bastrop, Caldwell, Hays, Travis, and Williamson Counties. The EPA default assumption in defining nonattainment area boundaries is the MSA boundaries; therefore, the Austin EAC elected to use the MSA for the EAC and the clean air action plan. In accordance with the commitments made in the Austin EAC, the area prepared and submitted in March of 2004 a clean air action plan that demonstrates attainment of the eight-hour standard in the area by 2007 and maintenance of the standard until at least 2012. On April 15, 2004, EPA promulgated nonattainment designations under the eight-hour ozone standard. Based on the 2001 - 2003 design value of 84 parts per billion, the Austin EAC area was designated attainment.

On December 20, 2002, the cities of Gilmer, Henderson, Kilgore, Longview, Marshall, and Tyler; the counties of Gregg, Harrison, Rusk, Smith, and Upshur; the commission; and EPA entered into an EAC for the Northeast Texas area. The Northeast Texas area applies to the five counties of Gregg, Harrison, Rusk, Smith, and Upshur. In accordance with the commitments made in the Northeast Texas

EAC, the area prepared and submitted in March of 2004 a clean air action plan that demonstrates attainment of the eight-hour standard in the area by 2007 and maintenance of the standard until at least 2012. On April 15, 2004, EPA promulgated nonattainment designations under the eight-hour ozone standard. Based on the 2001 - 2003 design value of 84 parts per billion, the Northeast Texas EAC area was designated attainment.

New Chapter 114, Subchapter J, Operational Controls for Motor Vehicles, Division 2, Locally Enforced Motor Vehicle Idling Limitations, limits heavy-duty motor vehicle idling to five consecutive minutes during the time period April 1 through October 31 of each calendar year within the jurisdiction of any local government in the state that has signed a Memorandum of Agreement with the commission to delegate enforcement to that local government.

These new rules are being adopted at the request of the local air quality planning organization in the Austin EAC area (Bastrop, Caldwell, Hays, Travis, and Williamson Counties) for use as a control strategy in its EAC agreement to maintain attainment with the federal eight-hour ozone NAAQS. This rulemaking will also provide local governments in other areas of the state the option of applying these rules in their areas when additional control measures are needed to achieve or maintain attainment of the federal eight-hour ozone standard in the future.

The December 18, 2002 EAC, commits the commission to incorporate a Clean Air Action Plan for the Austin area into the SIP and adopt the revised SIP by December 31, 2004. The adopted rules are part of the attainment demonstration. In June 2004 the Austin area was designated attainment for the eight-

hour ozone standard based on the design value from the 2001 - 2003 average. However, monitoring data from the 2004 ozone season, which has not yet been validated, indicates that the 2002 - 2004 average will result in a design value indicative of nonattainment for the area. Once the 2004 ozone season data is validated it could form the basis for EPA to designate the Austin area as nonattainment. However, for such EAC areas, EPA has committed to not revise its April 2004 attainment designation to nonattainment if the Austin EAC region continues to meet EAC milestones and obligations.

These rules will implement idling limits for gasoline and diesel-powered engines in heavy-duty motor vehicles within the jurisdiction of any local government in the state that has signed a Memorandum of Agreement with the commission to delegate enforcement to that local government. Local enforcement is crucial to the effective implementation of rules to reduce the extended idling of gasoline and diesel-powered heavy-duty vehicles and will help to ensure the reduction in nitrogen oxide (NO<sub>x</sub>) and volatile organic compound (VOC) emissions, that is needed by local governments to achieve or maintain attainment of the federal eight-hour ozone standard. These idling limits will lower NO<sub>x</sub> emissions and other pollutants from fuel combustion. Because NO<sub>x</sub> is a precursor to ground-level ozone formation, reduced emissions of NO<sub>x</sub> will result in ground-level ozone reductions. To comply with the heavy-duty motor vehicle idling regulations, no person within the jurisdiction of a local government that has signed a Memorandum of Agreement with the commission to delegate enforcement to that local government may cause, suffer, allow, or permit the primary propulsion engine of a heavy-duty motor vehicle to idle for more than five consecutive minutes when the vehicle is not in motion during the time period of April 1 through October 31.

Currently, there are no federal regulations governing idle time for heavy-duty motor vehicles.

Therefore, the state has the authority to control motor vehicle idling. The requirements developed by the commission for this NO<sub>x</sub> emission reduction strategy will result in restrictions on the time allowed for heavy-duty motor vehicle idling.

Modeling assessing the benefits of this NO<sub>x</sub> emission reduction strategy demonstrated that emission reductions could be achieved by limiting the idling time of heavy-duty motor vehicles. By the year 2007, the idling limits will reduce NO<sub>x</sub> emissions in the Austin MSA by 0.67 tons per day.

#### SECTION BY SECTION DISCUSSION

New §114.510, Definitions, contains definitions for the terms “Idle,” “Local government,” “Motor vehicle,” and “Primary propulsion engine.” Because these rules only apply to motor vehicles with a gross vehicle weight rating (GVWR) over 14,000 pounds, the definition of “Motor vehicle” in this division differs from the definition of “Motor vehicle” in 30 TAC §101.1, concerning Definitions.

New §114.511, Applicability, establishes that these rules are applicable only within the jurisdiction of a local government that has signed a Memorandum of Agreement with the commission to delegate enforcement of these provisions to that local government.

New §114.512, Control Requirements for Motor Vehicle Idling, establishes the control requirements that limit motor vehicle idling to five consecutive minutes when the vehicle is not in motion during the time period April 1 through October 31 of each calendar year. At adoption, the phrase “as defined in

§114.510 of this title (relating to Definitions)” is inserted after the term “motor vehicle” to add specificity.

New §114.517, Exemptions, provides exemptions to the control requirements of §114.512 for the following circumstances: 1) a motor vehicle that has a GVWR of 14,000 pounds or less; 2) a motor vehicle forced to remain motionless because of traffic conditions over which the operator has no control; 3) a motor vehicle being used as a military, reserve forces, national guard, emergency, or law enforcement motor vehicle, with a change made at adoption to add the exemption for military, national guard, and reserve forces uses of vehicles; 4) the primary propulsion engine of a motor vehicle providing a power source necessary for mechanical operation, not including propulsion, passenger compartment heating, or air conditioning; 5) the primary propulsion engine of a motor vehicle being operated for maintenance or diagnostic purposes; 6) the primary propulsion engine of a motor vehicle being operated solely to defrost a windshield; 7) the primary propulsion engine of a motor vehicle that is being used to supply heat or air conditioning necessary for passenger comfort or safety in those vehicles intended for commercial passenger transportation or school buses, in which case idling up to a maximum of 30 minutes is allowed; 8) the motor vehicle is used for passenger transit operations, in which case idling up to a maximum of 30 minutes is allowed; 9) the primary propulsion engine of a motor vehicle being used as airport ground support equipment; or 10) if the motor vehicle is rented or leased to a person who operates the vehicle and who is not employed by the vehicle owner, the vehicle owner is not covered. Exemptions from this category of equipment that may exist in other rules or agreements, such as freezing weather equipment or leased equipment, do not apply here. At adoption, a minor wording change is also made to §114.517(4) to communicate better that passenger compartment

air conditioning and heating are also not exempted by this provision. At adoption, a change is made to §114.517(8) to clarify that exemption applies to passenger transit operations.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules are not subject to §2001.0225 because although the adoption meets the definition of a “major environmental rule” as defined in that statute, it does not meet any of the four applicability requirements listed in §2001.0225(a). The regulatory analysis requirements of Texas Government Code, §2001.0225 only apply to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. Specifically, this rulemaking will limit heavy-duty motor vehicle idling within the jurisdiction of any local government in the state that has signed a Memorandum of Agreement with the commission to delegate enforcement to that local government. States are primarily responsible for ensuring attainment and maintenance of the federal ozone standards once established by EPA. Under Federal Clean Air Act (FCAA), §110, states must submit to EPA for approval SIPs that provide for the attainment and maintenance of the ozone NAAQS through control programs directed to sources of the pollutants involved. This rulemaking does not exceed a standard set by federal law, and does not exceed an express requirement of state law, but was developed to aid in the maintenance of federal air

quality standards. This adoption is intended to help keep the Austin EAC area from going into nonattainment of the eight-hour ozone standard. This rulemaking does involve a compact, which is an agreement or contract between the state and an agency or representative of federal government to implement a state and federal program, however, the rules do not exceed the requirements of that compact. This rulemaking helps the Austin EAC area continue to meet the milestones of the compact and demonstrate continuing attainment of the eight-hour ozone standard. Finally, this rulemaking was not developed solely under the general powers of the agency. Because this rulemaking does not meet any of the four applicability requirements, Texas Government Code, §2001.0225 does not apply, and a regulatory impact analysis is not required.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether Texas Government Code, Chapter 2007 is applicable. The analysis indicates that this action is reasonably being taken to fulfill an obligation mandated by federal law, and therefore is exempt under Texas Government Code, §2007.003(b)(4). The specific purpose of this rulemaking is to limit heavy-duty motor vehicle idling within the jurisdiction of any local government in the state that has signed a Memorandum of Agreement with the commission to delegate enforcement to that local government. These rules are adopted at the request of local governments in the affected counties as part of the EAC for the Austin area. In June 2004 the Austin area was designated attainment for the eight-hour ozone standard based on the design value from the 2001 - 2003 average. However, monitoring data from the 2004 ozone season, which has not yet been validated, indicates that the 2002 - 2004 average will result in a design value indicative of nonattainment for the area. Once the 2004 ozone season data is validated

it could form the basis for EPA to designate the Austin area as nonattainment. However, for such EAC areas, EPA has committed to not revise its April 2004 attainment designation to nonattainment if the Austin EAC region continues to meet EAC milestones and obligations.

Although the adopted idling rules do not directly prevent a nuisance, prevent a grave and immediate threat to life or property, and do not prevent a real and substantial threat to public health and safety, Texas Government Code, §2007.003(b)(4) provides that Chapter 2007 does not apply to these rules because they are reasonably taken to fulfill an obligation mandated by federal law. The rules can be used by the Austin EAC area to meet the ozone air standard set by EPA under FCAA, §109. States are primarily responsible for ensuring attainment and maintenance of the NAAQS once established by EPA. Under FCAA, §110, states must submit to EPA for approval SIPs that provide for the attainment and maintenance of the ozone NAAQS through control programs directed to sources of the pollutants involved. Therefore, one purpose of this rulemaking action is to allow the Austin EAC area to meet and maintain federal air quality standards. Emissions reductions that can be obtained by use of the rules will help the Austin EAC area meet its compact milestones and thus defer a nonattainment designation if future monitoring shows nonattainment of the ozone standard.

Because the adopted rules meet the requirements of Texas Government Code, §2007.003(b)(4), this rulemaking will not constitute a takings under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking action and found that the adoption is an action identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, or will affect an action/authorization identified in §505.11, and therefore the applicable goals and policies of the Texas Coastal Management Program (CMP) were considered during the rulemaking process.

The commission determined that under 31 TAC §505.22, the rulemaking action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized and ozone levels will be reduced as a result of the rulemaking. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 Code of Federal Regulations, to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This rulemaking action complies with 40 Code of Federal Regulations. Therefore, in compliance with 31 TAC §505.22(e), this rulemaking action is consistent with CMP goals and policies.

#### PUBLIC COMMENT

Public hearings on this proposal were held in Austin on August 23, 2004, in Longview on August 24, 2004, and in San Antonio on August 26, 2004, and oral comments were received from the United States Department of Defense (DoD). The public comment period ended at 5:00 p.m. on August 30, 2004. Written comments were submitted by Environmental Defense (ED); the Galveston-Houston Association for Smog Prevention (GHASP); the Sierra Club, Houston Regional Group (Sierra-Houston); the

Department of the Air Force (USAF); DoD; the United States Environmental Protection Agency, Region 6 (EPA); the Association of Electric Companies of Texas, Inc. (AECT); the Central Texas Clean Air Coalition (CAC); the Texas Motor Transportation Association (TMTA); TXU Electric Delivery (TXU); and two individuals. ED, Sierra-Houston, and CAC indicated that they supported the rule, and CAC also suggested changes. No commenter opposed the adoption of the rules. GHASP, USAF, DoD, EPA, AECT, TMTA, TXU, and two individuals did not indicate whether they were for or against the adoption of the rules, but provided specific comments on the rules.

#### RESPONSE TO COMMENTS

CAC, ED, and Sierra-Houston issued their support of the proposed rulemaking.

**The commission acknowledges the comments and appreciates the support of the rules.**

CAC and ED requested an update to language in the preamble that states that the Austin area is currently monitoring attainment of the eight-hour ozone standard. Commenters requested update to include the 2002 - 2004 ozone season results.

**The commission agrees that monitoring results recorded for the Austin area since the SIP and rule packages were proposed have shown ozone readings that would cause the region to be in noncompliance of the NAAQS. These results have not yet been validated, but if they are, they could form the basis for designating the Austin area as nonattainment for the eight-hour ozone standard. A nonattainment designation would be deferred if Austin continues to meet EAC**

**milestones and obligations. The BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES in the preamble has been revised to reflect the current monitoring data.**

CAC and EPA requested clarification of why the emission reduction estimate for the locally enforced idling limitations was different in the SIP from what was included in the area's Clean Air Action Plan and in the preamble.

**The Austin Clean Air Action Plan documentation and the proposal preamble indicate that the proposed idling restriction rule for all vehicles over 14,000 pounds GVWR would yield 0.19 NO<sub>x</sub> tons of benefit. This analysis was performed by ERG, Inc. several months ago and is similar to analyses performed by ERG, Inc. under contract to the TCEQ for the December 2000 Houston area SIP. Prior to January 2004, there was no technical guidance available from EPA on calculating the benefits from idling restriction measures. ERG, Inc. developed innovative approaches to assessing the potential idling restriction measures and is to be commended for their excellent work.**

**In January 2004, EPA released *Guidance for Quantifying and Using Long Duration Truck Idling Emission Reductions in State Implementation Plans and Transportation Conformity*, which states that "extended idling" emissions account for 3.4% of the total emissions calculated with MOBILE6.2 for the Heavy-Duty Diesel Vehicle 8a and 8b (HDDV8a and HDDV8b) vehicle classes. These two vehicle types, more commonly referred to as the diesel-powered "18-wheeler"**

**trucks, are collectively responsible for the majority of both the heavy-duty onroad NO<sub>x</sub> and, in particular, the diesel-powered portion of the onroad NO<sub>x</sub>. In addition, 18-wheelers are the most common source of “extended idling” events. Consequently, the majority of any idling restriction benefit will come from the HDDV8a and HDDV8b classes.**

**According to the EPA guidance, the 3.4% figure represents a maximum amount of SIP credit that can be claimed for idling reduction measures, whether they be mandatory or voluntary, or a combination. Therefore, under this conservative scenario for estimating emission reductions from the idling restriction rule, where the rule applied only to the HDDV8a (33,001 - 60,000 pounds GVWR) and HDDV8b (60,001 and above pounds GVWR) classes, the maximum possible benefit would be 0.67 NO<sub>x</sub> tons per day for the five-county Austin area. This figure was developed by taking 3.4% of the HDDV8a/HDDV8b emissions for the five-county Austin area (as developed by Texas Transportation Institute) and processing those emissions through EPS2x by applying both a temperature/humidity NO<sub>x</sub> correction and the benefit for low emissions diesels. Thus, the appropriate level of emission reduction credit for this measure, which is now included in both the SIP revision and the BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES in the preamble, is 0.67 NO<sub>x</sub> tons per day for the five-county Austin area.**

USAF and DoD commented that they are concerned that enforcement of the proposed rules may negatively impact the ability of the military to properly train its troops. They suggested language in §114.517(3) to exempt United States military tactical, national guard, or reserve forces vehicles from the rules.

**The commission agrees with this comment and has included language within §114.517(3) to exempt United States military, national guard, and reserve forces vehicles while operating in an official capacity or participating in official training exercises.**

TXU and AECT commented that they feel that §114.517(4) did not sufficiently cover the operation of the primary propulsion engine in certain trucks exceeding the 14,000 GVWR for powering the alternator, which has an inverter that provides electrical power for plugs located in the work bed of the truck. These plugs are then used for electrical tools and equipment in construction, maintenance, or repair of electric service facilities.

**The commission anticipates that idling restrictions will encourage innovative solutions to excessive idling, such as the addition of auxiliary power units (APUs) to power passenger compartment heating, air conditioning, and auxiliary systems such as electrical power for plugs used by tools and equipment. However, the commission realizes that APUs might not be the solution for all operational needs and included an exemption in §114.517(4) which provides for idling while supplying power necessary for “mechanical operation” not including propulsion and passenger compartment heating, or air conditioning, which provides for the situation mentioned. The commission would, however, allow the local government implementing the idling restrictions to determine its own interpretation of “mechanical operation” found in §114.517(4) for enforcement purposes. No change was made in response to these comments.**

TMTA commented that the rules should include an exception similar to California's idling rules, that exempt vehicles idling to power heaters, air conditioners, or ancillary equipment during sleeping or resting in a sleeper berth. The commenter also stated that clarification was needed for §114.517(5), which provides idling for vehicle maintenance or diagnostic purposes. TMTA stated that idling is needed for vehicle inspections required by 49 Code of Federal Regulations §392.7 and §396.11 and for inspections required by commercial vehicle safety enforcement personnel, which both take more than five minutes. TMTA also stated that the local government implementing the idling restrictions should provide signs to inform out-of-state truck drivers of the idling requirements.

**The commission anticipates that idling restrictions will encourage innovative solutions to excessive idling, such as revised queuing procedures or the addition of APUs to power passenger compartment heating, air conditioning, and auxiliary systems. If a situation occurs that involves idling longer than five minutes, and the situation is not covered by an exemption, then the commission believes the engine should not be idled. The commission feels that the exemption in §114.517(5) would cover any idling during inspections such as those mentioned in the comment. The commission would allow the local government implementing the idling restrictions to determine its own enforcement and outreach strategies for informing those possibly affected by the restrictions. No change was made in response to these comments.**

An individual commented that an exemption should be provided for vehicles with voluntary air quality controls or emission reductions. The person stated that this could include vehicles certified in a

predetermined emission bin or engine family, vehicles retrofitted with emissions reducing equipment, or vehicles utilizing specific low emission fuels or fuel additives.

**The commission hopes and anticipates that idling restrictions will help encourage the types of innovative solutions that will eliminate excessive idling. Solutions such as revised queuing procedures or the addition of APUs should eliminate the need for extended idling of the primary propulsion engine altogether. The Tier II emission standards that incorporate different emission bin levels and are being phased in starting with the model year 2004, affect light-duty vehicles up to 10,000 GVWR that are not the target of this rulemaking and do not typically idle for extended periods like the heavy-duty vehicles over 14,000 GVWR. Also, the already difficult task of enforcing the idling restrictions would become more challenging and overly burdensome for the enforcement agents if technologies such as cleaner fuels, fuel additives, and engine families with different emission standards were allowed to also be exempt from the idling restrictions. No change was made in response to these comments.**

GHASP commented that the rules should be expanded to apply to all local government authorities (e.g., port authorities, universities, and others with police authorities), and not just local governments.

**The commission disagrees with the need for the expansion of the definition of local government mentioned in the comment. These rules already apply to local government authorities. Under §114.510(2), a local government is defined as “A city, county, municipality, or political subdivision of the state.” Political subdivisions include such bodies as port authorities, police**

**authorities, public schools, and universities, etc. No change was made in response to this comment.**

GHASP commented that the commission should be allowed to enter into a Memorandum of Agreement with a local government or local government authority that states that the restriction only applies in a certain portion of the jurisdiction. Furthermore, GHASP commented that this should allow pilot programs to test the regulations in these areas and target areas where “problems” are most severe.

**The commission disagrees with the comment. The Memorandum of Agreement will apply to the entire jurisdiction of the local government. To comply with the heavy-duty motor vehicle idling regulations, no person within the jurisdiction of a local government that has signed a Memorandum of Agreement with the commission to delegate enforcement to that local government may cause, suffer, allow, or permit the primary propulsion engine of a heavy-duty motor vehicle to idle for more than five consecutive minutes when the vehicle is not in motion during the time period of April 1 through October 31. The Memorandum of Agreement will not hinder local governments from promoting any pilot project they wish or targeting severe problem areas with any type of enforcement activity. No change was made in response to this comment.**

GHASP commented that the commission should ensure that the enforcement authority in any agreement does not conflict with the enforcement provisions of local government authorities and/or portions of jurisdictions.

**The commenter appears to assume that in the case where a county and a local government have both entered into a separate Memorandum of Agreement with the commission, the county's and the local government's enforcement provisions might conflict. In actuality, the provisions will be the same for all local governments for applicability, control requirements, and exemptions. The commission would allow the local government implementing the idling restrictions to determine their own enforcement and outreach strategies for informing those possibly affected by the restrictions. To comply with the heavy-duty motor vehicle idling regulations, no person within the jurisdiction of a local government that has signed a Memorandum of Agreement with the commission to delegate enforcement to that local government may cause, suffer, allow, or permit the primary propulsion engine of a heavy-duty motor vehicle to idle for more than five consecutive minutes when the vehicle is not in motion during the time period of April 1 through October 31. No change was made in response to this comment.**

An individual requested to know who will enforce the rules and if the rules will apply to post office vehicles.

**These adopted rules will implement idling limits for heavy-duty motor vehicles within the jurisdiction of any local government that has signed a Memorandum of Agreement with the commission to delegate enforcement. Local enforcement is crucial to the effective implementation of rules to reduce the extended idling of heavy-duty vehicles and will help to ensure the reductions in NO<sub>x</sub> and VOC emissions, that are needed by local governments to achieve or maintain attainment of the federal eight-hour ozone standard. A local jurisdiction that has the authority to**

**enforce these state rules may enforce the rules against a federal entity such as the United States Postal Service. Given a valid exercise of authority by the local jurisdiction, a federal entity is not exempt from these rules, with the exception of the exemptions provided in §115.517. No changes were made in response to this comment.**

One individual questioned the basis and need for the SIP.

**The commission, the local authorities, and EPA have agreed under the EAC that a SIP would be developed. The commission concludes that the proposed control measures will produce emission reductions necessary to address exceedances of the ozone standards.**

**SUBCHAPTER J: OPERATIONAL CONTROLS FOR MOTOR VEHICLES**

**DIVISION 2: LOCALLY ENFORCED MOTOR VEHICLE IDLING LIMITATIONS**

**§§114.510 - 114.512, 114.517**

**STATUTORY AUTHORITY**

The new sections are adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC, and under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA. The new sections are also adopted under TCAA, §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.019, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles; and §382.208, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

**§114.510. Definitions.**

Unless specifically defined in the Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act) or in the rules of the commission, the terms used in this subchapter have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms

which are defined by Texas Health and Safety Code, Chapter 382; §3.2 of this title (relating to Definitions); §101.1 of this title (relating to Definitions); and §114.1 of this title (relating to Definitions), the following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) **Idle** - The operation of an engine in the operating mode where the engine is not engaged in gear, where the engine operates at a speed at the revolutions per minute specified by the engine or vehicle manufacturer for when the accelerator is fully released, and there is no load on the engine.

(2) **Local government** - A city, county, municipality, or political subdivision of the state.

(3) **Motor vehicle** - Any self-propelled device powered by an internal combustion engine and designed to operate with four or more wheels in contact with the ground, in or by which a person or property is or may be transported, and is required to be registered under Texas Transportation Code, §502.002, excluding vehicles registered under §502.006(c).

(4) **Primary propulsion engine** - A gasoline or diesel-fueled internal combustion engine attached to a motor vehicle that provides the power to propel the motor vehicle into motion and maintain motion.

**§114.511. Applicability.**

The provisions of §114.512 and §114.517 of this title (relating to Control Requirements for Motor Vehicle Idling; and Exemptions) are applicable only within the jurisdiction of a local government that has signed a Memorandum of Agreement with the commission to delegate enforcement of the provisions of this division to that local government.

**§114.512. Control Requirements for Motor Vehicle Idling.**

No person shall cause, suffer, allow, or permit the primary propulsion engine of a motor vehicle to idle for more than five consecutive minutes when the motor vehicle, as defined in §114.510 of this title (relating to Definitions), is not in motion during the period of April 1 through October 31 of each calendar year.

**§114.517. Exemptions.**

The provisions of §114.512 of this title (relating to Control Requirements for Motor Vehicle Idling) do not apply to:

- (1) a motor vehicle that has a gross vehicle weight rating of 14,000 pounds or less;

(2) a motor vehicle forced to remain motionless because of traffic conditions over which the operator has no control;

(3) a motor vehicle being used by the United States military, national guard, or reserve forces, or as an emergency or law enforcement motor vehicle;

(4) the primary propulsion engine of a motor vehicle providing a power source necessary for mechanical operation, not including propulsion, and/or passenger compartment heating, or air conditioning;

(5) the primary propulsion engine of a motor vehicle being operated for maintenance or diagnostic purposes;

(6) the primary propulsion engine of a motor vehicle being operated solely to defrost a windshield;

(7) the primary propulsion engine of a motor vehicle that is being used to supply heat or air conditioning necessary for passenger comfort/safety in those vehicles intended for commercial passenger transportation or school buses in which case idling up to a maximum of 30 minutes is allowed;

(8) the primary propulsion engine of a motor vehicle used for passenger transit operations in which case idling up to a maximum of 30 minutes is allowed;

(9) the primary propulsion engine of a motor vehicle being used as airport ground support equipment; or

(10) the owner of a motor vehicle rented or leased to a person who operates the vehicle and is not employed by the owner.